

April 22, 2015

Jose Diaz
Associate Manager, Appeals Team, Schools and Libraries Division
30 Lanidex Plaza West | Parsippany, NJ 07054
T: 973.581.5141 | F: 973.599.6525
jdiaz@sl.universalservice.org

Dear Mr. Diaz:

Please accept this letter and its attachments as the School District's response to your Review dated April 15, 2015.

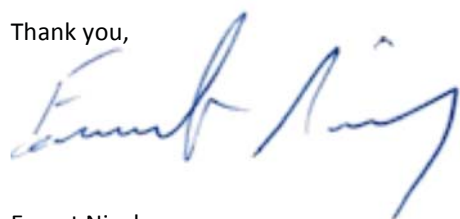
Glendale Elementary School District
BEN 142966
Funding Request #: 2208461

The following items have been included for your review:

- Response to PIA Review Questions (3 pages)
- USFR Memorandum No. 248 (5 pages)

Please contact us should you have any additional questions or concerns.

Thank you,



Ernest Nicely
Nicely Done Consulting, LLP

Appeal Information Response

I. SPIN changes

Please provide documentation showing that, per state and local procurement laws in FY 2011, for purchases over \$50,000, the district was allowed to select a vendor off of the State Master Contract as an alternative to issuing a RFP.

In answer to your request I've outlined the process below and also included excerpts from the different rules and codes that are relevant to School District Procurement in Arizona.

The first item (attached below) is the USFR Memorandum No. 248. The USFR is a Uniform System of Financial Records created by the Office of the Arizona Auditor General who defines the financial procedures and reporting in the state. This Memorandum was published in 2010 and references the thresholds in affect during the procurement of this funding request.

I'm also including an excerpt from the Arizona School District Procurement rules that define the procurement processes for school districts in Arizona. This section authorizes cooperative purchasing. You can find the full text of these procurement rules at the following link.
http://apps.azsos.gov/public_services/Title_07/7-02.pdf

INTERGOVERNMENTAL PROCUREMENTS

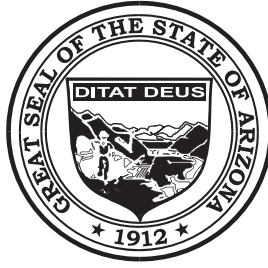
R7-2-1191. Cooperative purchasing authorized

A school district may either participate in, sponsor, conduct, or administer a cooperative purchasing agreement for the procurement of any materials, services, or construction with one or more public procurement units in accordance with an agreement entered into between the participants. An agreement entered into as provided in Sections R7-2-1191 through R7-2-1195 is exempt from A.R.S. § 11-952, subsections (D), (E) and (F). Parties under a cooperative purchasing agreement may:

1. Sponsor, conduct, or administer a cooperative agreement for the procurement or disposal of any materials, services or construction.
2. Cooperatively use materials or services.
3. Commonly use or share warehousing facilities, capital equipment and other facilities.
4. Provide personnel, except that the requesting public procurement unit shall pay the public procurement unit providing the personnel the direct and indirect cost of providing the personnel, in accordance with the agreement.

5. On request, make available to other public procurement units informational, technical or other services that may assist in improving the efficiency or economy of procurement. The public procurement unit furnishing the informational or technical services has the right to request reimbursement for the reasonable and necessary costs of providing such services.

The activities described in subsections (1) through (5) do not limit what parties may do under a cooperative purchasing agreement.



USFR MEMORANDUM NO. 248

TO: School District Administrators; County School Superintendents

FROM: Laura Miller, Office of the Auditor General
Vicki Salazar, Arizona Department of Education (ADE)

DATE: September 22, 2010

SUBJECT: School District Procurement (Supersedes USFR Memorandum No. 213)

The Arizona State Board of Education recently increased the procurement threshold for sealed bids and proposals. As a result, guidelines for purchases below that threshold have been updated as discussed below. This memorandum also provides guidance on obtaining quotations and awarding contracts, analyzing cumulative purchases, purchasing from employees and governing board members, multiple year purchases, multiple awards, due diligence, and procurement of specified professional services and construction services.

Procurement Thresholds

Pursuant to Arizona Revised Statutes (A.R.S.) §15-213, the State Board has increased the threshold for sealed bids and proposals to \$50,000, effective for purchases made after April 26, 2010. For purchases exceeding \$50,000, districts must follow the School District Procurement Rules, which are available on the Arizona Secretary of State's Web Site (www.azsos.gov/public_services/Title_07/7-02.htm). The Rules are located in the Arizona Administrative Code in Title 7 Education, Chapter 2 State Board of Education, Articles 10 and 11, School District Procurement.

Pursuant to A.R.S. §15-271, the Auditor General must prescribe and districts must comply with the guidelines found in the *Uniform System of Financial Records* (USFR) (page VI-G-8) for purchases below the \$50,000 threshold. The thresholds in those guidelines have been revised as a result of the higher threshold for sealed bids and proposals. Effective September 22, 2010, the required guidelines are revised as follows:

- For purchases costing at least \$25,000 but not more than \$50,000, districts should obtain written price quotations from at least three vendors.
- For purchases costing at least \$5,000, but less than \$25,000, districts should obtain oral price quotations from at least three vendors.

Except as noted below for purchases from employees and governing board members, competitive purchasing is not required for purchases less than \$5,000. Districts should use reasonable judgment in awarding such contracts to ensure they are advantageous to the district.

Districts should review governing board policies to determine if revisions are necessary to allow the district to follow the new thresholds. Any variations from these guidelines, such as lower dollar limits or higher levels of required competition, must be reasonable and must be documented in the district's governing board minutes as a policy.

Obtaining Quotations and Awarding Contracts

Districts should issue requests for price quotations in sufficient time before the purchase is to be made and in adequate detail to allow vendors to effectively respond. If the contract will be awarded based on price and additional factors, such as quality of the product or work to be performed, those factors should be included in the request for quotations. The request for quotations may also include:

1. Offer submission requirements, including offer due date and time, where offers will be received, and offer acceptance period;
2. Any purchase description, specifications, delivery or performance schedule, and inspection and acceptance requirements;
3. The minimum information that the offer shall contain;
4. Whether negotiations may be held;
5. Any contract options, including renewal or extension;
6. Uniform terms and conditions by text or reference; and
7. Any other terms, conditions, or instructions specific to the procurement.

The vendor name, person(s) contacted, telephone number, and price quotations or results of the request should be documented and retained in a district procurement file or with the related requisition form or purchase order. If three oral or written price quotations cannot be obtained, districts should document the vendors contacted and their reasons for not providing quotations and retain this with the price quotations. Districts should award the contract to the vendor determined to be most advantageous to the district in accordance with the factors identified in the request for quotations. If a vendor is selected because of factors other than lowest price, the reasons should be fully documented and retained with the price quotations. If only one quotation can be obtained, the district should document why the contract award is advantageous to the district before awarding a contract. After a contract is awarded, districts should issue a written contract or prepare and approve a purchase order before goods or services are ordered.

Procurement files, including quotations received and the district's basis for contract award, are public records and must be made available for public inspection after the contract is awarded or procurement is cancelled.

In lieu of obtaining quotations as discussed above, districts may choose to follow the School District Procurement Rules for purchases below the \$50,000 threshold. For example, districts may follow the School District Procurement Rules for cooperative purchasing agreements (R7-2-1191 et seq.), sole-source procurement (R7-2-1053), and emergency procurements (R7-2-1056 and 1057), rather than following the guidelines for oral or written quotations. Districts may also use current General Services Administration (GSA) contracts if authorized by the governing board. The governing board must determine in writing that all of the criteria listed in A.R.S. §15-213(J) apply to a GSA contract before authorizing purchases under the contract. Further, districts may purchase from Arizona Correctional Industries, Arizona Industries for

the Deaf and Blind, or a certified nonprofit agency that serves individuals with disabilities without competitive purchasing.

Analyzing Cumulative Purchases

When determining the level of competitive purchasing required (i.e., oral quotations, written quotations, or sealed bids or proposals), districts should consider not only the dollar amount of the current purchase but the total dollar amount of all like item purchases that might occur during the fiscal year. If the amount of the good or service that will be needed during the year is uncertain, districts should estimate cumulative purchases by analyzing cumulative purchases of like items for the previous fiscal year, adjusting for any changes (e.g., increased enrollment, new school) that might affect the amount of the good or service needed. An analysis of cumulative purchases should be based on like items rather than vendors. Specifically, if the district purchased like items from multiple vendors, the total of all like item purchases from all vendors should be considered. Also, if the district made unlike item purchases from a vendor that provides multiple types of goods or services, unlike item purchases from the vendor should be considered separately.

Competitive purchasing requirements must be followed regardless of the purchasing method (purchase order, credit card, purchasing card, etc.) used for the purchase(s). Total like item purchases from all purchasing methods should be considered in determining the appropriate level of competitive purchasing required.

Purchasing from Employees and Governing Board Members

Districts are required to follow School District Procurement Rules for all purchases of goods or services from district employees regardless of dollar amount. A.R.S. §38-503(C) prohibits public **employees** from providing their employers with any **equipment, material, supplies, or services** unless provided under an award or contract let after public competitive bidding. Accordingly, Arizona Attorney General Opinion I06-002 states that districts must follow the School District Procurement Rules, regardless of the expenditure amount, when purchasing goods or services from district employees. This applies to any purchase using district monies, including extracurricular activities fees tax credit contributions and monies held in trust by the district such as student activities monies. Although the School District Procurement Rules exempt expenditures of student activities monies from the Rules, that exemption does not apply to purchases in which a district employee acts as a vendor. Following the guidelines for oral or written quotations is not sufficient to comply with the requirements of A.R.S. §38-503(C).

Similarly, districts are required to follow School District Procurement Rules for all purchases of services from district board members regardless of dollar amount. A.R.S. §38-503(C) prohibits **governing board members** from providing their district with any **services**, unless provided under an award or contract let after public competitive bidding. However, for purchases of **supplies, materials, and equipment** from district board members, districts are only required to follow School District Procurement Rules if the purchase exceeds \$50,000. Purchases below the \$50,000 threshold must comply with the USFR guidelines for oral and written quotations. For districts with 3,000 or more students, statutes limit purchases of goods or services from board members to \$300 per transaction and \$1,000 total within any 12-month period, and require that the governing board adopt a policy authorizing such purchases within the preceding 12 months. Districts with less than 3,000 students may make purchases of goods or services from governing board members in any amount, provided each purchase is approved by the governing board and the amount of the purchase is included in the board's meeting minutes. Arizona Attorney General Opinions I87-035 and I06-002, and A.R.S. §§15-213, 15-323, and 38-503

Further, districts should establish procedures to ensure that all employees and board members comply with A.R.S. §38-503 related to conflicts-of-interest. All employees or board members who have, or whose relative has, a substantial interest in any contract, sale, purchase, service, or decision must file a conflict-of-interest statement and refrain from voting upon or otherwise participating in any manner as an employee or board member in that contract, purchase, or service.

Multiple Year Purchases

School District Procurement Rule R7-2-1093 allows districts to enter into contracts for up to 5 years if the terms and conditions of renewal or extension, if any, are included in the solicitation for bids or proposals and monies are available for the first fiscal year at the time of contracting. Districts may also solicit oral or written quotations to cover purchases up to 5 years if monies are available for the first year at the time of contracting. When determining the level of competitive purchasing required, a district must consider the total expenditure that will be made over the multiple years. For example, if a district wanted to obtain pricing for 3 years on an item, it could do so by written quotations if the total anticipated expenditures over the 3 years were expected to be less than the threshold for sealed bids and proposals.

Before multi-term contracts are used for purchases over \$50,000, the district's governing board must determine in writing that: the estimated requirements cover the contract period and are reasonable and continuing; a multi-term contract will serve the district's best interests by encouraging competition or promoting economies in procurement; and if monies are not appropriated or available in future years, the contract will be canceled. If multiple-year quotations are used, districts should document the time period that the pricing is valid, that the vendor will honor the pricing for that time period, and that, while the district intends to purchase certain quantities, all purchases are subject to funds availability.

Multiple Awards

A multiple award is defined as an award of an indefinite quantity contract for one or more similar materials or services to more than one bidder or offeror. In general, districts should not use multiple awards allowing more than one vendor to supply the same goods or service. However, there are instances in which districts may make multiple awards. For example, multiple awards may be made if one vendor is unable to provide the total quantity of goods or services requested by the district, or if geographic distance precludes the use of one vendor throughout the district. In these instances, the request for proposals or invitation for bids should clearly state whether multiple awards may be used so that bidders can take that into consideration when pricing their proposals or bids.

Before a multiple award is made, the district should determine, and document the specific reason(s) in writing, that a single award is not advantageous to the district. The district should also limit the contract awards to the least number of suppliers necessary to meet the district's requirements.

Due Diligence

Districts are responsible for ensuring that procurements, whether done independently or through a cooperative purchasing agreement, are done in accordance with School District Procurement Rules. The appropriate amount and complexity of due diligence to be performed by a district will vary based on the procuring entity with which the district is participating. A.R.S. §15-213(F) requires school districts and school purchasing cooperatives, in connection with any audit conducted by a certified public accountant, to have a systematic review of purchasing practices. The Office of the Auditor General has prescribed guidelines for performing these reviews as part of the Procurement Compliance Questionnaire for cooperatives and the Expenditures section of the USFR Compliance Questionnaire for districts. A

cooperative or lead district (entity) that has had such a review within the past year and made the results of the review available, may not warrant the same amount or complexity of due diligence as an entity that has not undergone a review or for which the results are unavailable. For example, if an entity had no findings as a result of its review, districts may need to do little or no additional due diligence beyond obtaining a copy of the compliance questionnaire as documentation for the results of the review. However, an entity that did not have a review or had a review with significant findings, would require a greater amount and complexity of due diligence. Districts should also consider any other information available on the entity's procurement practices.

Districts may, but are not required to, perform due diligence for every contract procured through cooperative purchasing. If an entity had no findings as a result of the review discussed above, districts may not need to review a particular contract except to ensure that the specific good or service to be purchased from the vendor is part of that contract. For an entity where more due diligence is required, it may be adequate to perform due diligence on a sample of contracts procured by the entity if that sample provides reasonable assurance that the entity's procurement practices comply with the School District Procurement Rules. To perform due diligence, districts may want to consider using the procurement questions in the compliance questionnaires as a guide in reviewing cooperative purchases.

Districts must use their judgment in determining the appropriate amount and complexity of due diligence required for each procuring entity with which they participate. For audit purposes, districts should retain documentation of the due diligence performed and its results in a procurement file.

Procurement of Specified Professional Services and Construction Services

Laws 2010, Chapter 283, which is available on the Arizona State Legislature's Web Site (www.azleg.gov/FormatDocument.asp?inDoc=/legtext/49leg/2R/laws/0283.htm), revised state procurement statutes related to specified professional services and construction services and requires that any school district procurement conducted under a rule based on statutes amended by Laws 2010, Chapter 283 that is commenced by publication of notice or issuance of a request for qualifications after July 29, 2010, be conducted pursuant to the amended statute, regardless of whether an applicable rule has been amended to conform to the changes. Since the School District Procurement Rules for specified professional services and construction services are based on some of these statutes, districts procuring these types of services should refer to Laws 2010, Chapter 283 for the amended guidelines until the Arizona State Board of Education incorporates the changes into the School District Procurement Rules.

If you have any questions or need assistance, please call the Office of the Auditor General, Accounting Services Division at (602) 553-0333, or ADE School Finance at (602) 542-5695.